THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.11206 OF 2006

27.06.2006

Between

N.Janardhan

…Petitioner

And

The Regional Joint Commissioner of Endowments, Multi Zone-III, Tilak Road, Hyderabad and others.

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.11206 OF 2006

ORDER:

The petitioner filed the instant writ petition questioning the order of the first respondent, dated 09.05.2006, in revision petition No.28 of 2005, whereby and whereunder the first respondent disposed of the revision petition filed by the petitioner giving liberty to him to approach the Deputy Commissioner for declaration as member of founder's family under Section 87(1)(h) of A.P.Charitable and Hindu Religious Institutions and Endowments Act, 1987 (the Act, for brevity).

The petitioner claims that he is the General Secretary of Sahasra Lingeswara Swamy Bhakta Brindam (hereafter called, the Society), which allegedly constructed Sri Sahasra Lingeswara Swamy Temple at Kamalanagar in Kapra Municipality. It appears in 1994, the said Society had filed O.A.No.8 of 1994 before the Deputy Commissioner of Endowments under Section 87(1)(e) of the Act seeking a declaration that the petitioner herein is the founder trustee of the temple. By order, dated 12.05.1995, the Deputy Commissioner declared the Society as the founder and that the members are entitled for trusteeship as contemplated under Section 15 of the Act. Aggrieved by the same, one G.Narasing Rao [(the then Chairman of the Board of Trustees), (not a party to this writ petition)] filed appeal being C.M.A.No.56 of 1995 under Section 88 of the Act on the file of the Court of the Chairman, Land Reforms Appellate Tribunal-cum-District Judge, Ranga Reddy. By order dated 10.02.1997, the appeal was dismissed by the appellate authority, aggrieved by which, Narasing Rao filed a revision petition before this Court being C.R.P.No.2854 of 1997 under Section 91 of the Act. By order, dated 11.11.1997, this Court dismissed the revision petition observing that the Assistant Commissioner shall decide the matter after obtaining the list of the members from the Society. In this background, the petitioner alleges that the General Secretary is entitled to be recognized/declared as a founder of the temple.

The Assistant Commissioner, second respondent herein, by proceedings, dated 23.11.2005, constituted Board of Trustees with five members including the petitioner herein, who was also nominated as Chairman of the Board of Trustees. The said order was challenged by the third respondent before the first respondent by way of revision under Section 92 of the Act. The revision was disposed of setting aside the order of the Assistant Commissioner insofar as it relates to the appointment of petitioner as Chairman giving liberty to approach the Deputy Commissioner under Section 87(1)(h) of the Act.

Learned counsel for the petitioner contends that the order passed by the Deputy Commissioner under Section 87(1)(e) of the Act has become final and therefore, the second respondent was correct in appointing the petitioner as Chairman of the Board of Trustees. Secondly, he would urge that the order passed by the first respondent goes against the orders of this Court in C.R.P.No.2854 of 1997 and therefore unsustainable. Lastly, he would submit that while exercising jurisdiction under Section 92 of the Act, the first respondent cannot interfere with the orders passed by the Deputy Commissioner under Section 87 of the Act.

Sri R.S.R.S.Sarma, learned counsel for the third respondent/Caveator, submits that the order passed by the Deputy Commissioner under Section 87(1)(e) of the Act is without jurisdiction. Secondly, he would urge that unless and until the order passed by the Deputy Commissioner is confirmed by the Commissioner of Endowments, the same cannot be given effect to. Thirdly, he submits that pursuant to the proceedings, dated 23.11.2005, a meeting of the Board of Trustees was convened and third respondent was elected as Chairman of the Board of Trustees. He brought to notice of this Court that the petitioner was also present in the said meeting, and hence he cannot again challenge the appointment of Board of Trustees. In support of this, he has placed before this Court the resolution of the Special Meeting of the Board of Trustees.

The petitioner challenged the proceedings of the second respondent appointing Board of Trustees for the temple by way of revision under Section 92 of the Act. Having noticed that the petitioner who claims to be the General Secretary of the Society was not declared or recognized as founder of the temple, the first respondent set aside his appointment relegating him to the Deputy Commissioner to obtain appropriate declaration under Section 87(1)(h) of the Act. The impugned order, therefore, does not suffer from any infirmity or illegality. Section 87(1)(e) of the Act empowers the Deputy Commissioner to declare whether a religious institution is a public trust or not. Sections 87(1)(h) of the Act on the other hand empowers the

Deputy Commissioner alone to declare whether or not a person is a founder or member of the founder family. Only when such declaration is made, a person can claim a right to be appointed as member of non-hereditary Board of Trustees under Section 17 of the Act. In this case, while disposing of the Civil Revision Petition No.2854 of 1997, this Court directed the Assistant Commissioner, Endowments, to verify the genuineness and correctness of the list of members furnished by the Society and proceed to appoint under Section 15 of the Act. This was not done by the Assistant Commissioner and no proceeding or order is placed before this Court to show that there was a specific declaration in favour of the petitioner as observed by this Court in C.R.P.No.2854 of 1997. It may be mentioned that unless and until a person is declared to be founder or member of the founder's family under Section 87(1)(h) of the Act, a mere declaration or order under Section 87(1)(e) that it is public institution would not enable a person to claim to be member of founder's family.

In a recent Judgment in **G.Rajendranadh Goud v State of Andhra Pradesh**[1], I have considered this aspect of the matter with reference to various provisions of the Act. Dealing with this aspect, it was observed therein.

> … the Explanation II to Section 17(1) of the Act describes children, grand children in agnatic line of succession as members of the family of the founder. The proviso to sub-section (1) of Section 17 casts an obligation on the appointing authority to appoint either the founder or one of the members of the family of the founder to be trustees in the Board. Whereas Explanation I requires a founder or a member of the family of a founder to be 'recognised' by the appointing authority. To reconcile Section 87(1)(h) of the Act, which confers Deputy Commissioner to decide question as to who is member of the founder's family and Section 17(1) which empowers the appointing authority to 'recognise', one should adopt the contextual interpretation while interpreting both the provisions separately and should adopt harmonious construction of both the provisions to avoid any conflict. Doing so, this Court is of considered opinion that when there is a dispute among the members of the founder, as to who is or who are members of the founder's family, an enquiry has to be necessarily conducted by the Deputy Commissioner of Endowments under Section 87(1)(h) of the Act. In a situation where this exercise has already been completed either before the Judgment of the Supreme Court in **Pannalal Bansilal Patil v State of A.P**[2]**.,** or while the circular issued by the Commissioner of Endowments was in operation or before coming into force of the amended Section 87(1)(h), unless and until such person or persons are recognized by the

appointing authority under Section 17(1) (under both the Explanations), no such person can be appointed as a member of the Board of Trustees. In the event of 'recognition' of all successors of the founder as members of the founder's family, it is for the appointing authority to recognize one of them subject to fulfilling the qualifications as one of the members of the family of the founder for being appointed as a trustee. Therefore, the conclusion is that when a member or members of the founder's family are not determined, it is only the Deputy Commissioner who has to conduct enquiry and any competent authority – be it Government; Commissioner of Endowments or Deputy commissioner or Assistant Commissioner – cannot have any jurisdiction to conduct such enquiry contemplated under Section 87(1)(h) of the Act.

As disclosed in the resolution of the Special Meeting held on 23.05.2006 (a copy of which is placed before this Court), the petitioner was also present in the Meeting and he also signed on the resolution. It shows that the third respondent was elected as Chairman. Therefore, this Court is not inclined to interfere in this matter. If so advised, it is open to the petitioner to approach the Deputy Commissioner under Section 87(1)(h) of the Act.

The writ petition, with the above observations, is accordingly dismissed. No costs.

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(V.V.S.RAO,J)

27.06.2006
pln

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[1] 2006 (1) ALD 705

[2] AIR 1996 SC 1023